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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,590	04/03/2001	Douglas LaVell Hale	2100P	3726

7590 07/26/2005
SAWYER LAW GROUP LLP
P.O. Box 51418
Palo Alto, CA 94303

EXAMINER

FAROOQ, MOHAMMAD O

ART UNIT	PAPER NUMBER
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2182

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,590

Applicant(s)

HALE ET AL.

Examiner

Mohammad O. Farooq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. U.S. Pat. No. 5,903,568.

2. As to claim 1, Tanaka et al. teach method comprising the steps of:

(a) receiving data from a first stack component of the protocol stack by a single layer manager (one of the lower-layer agent out of three in item 107, fig. 3; and single layer manager is lower-layer manager, item 106, fig. 3; col. 6, lines 21-59);

(b) analyzing the data for instrumentation information by the single layer manager (col. 6, lines 21-59; item 106, fig. 3) ; and

(c) routing the data to a second stack component of the protocol stack by the single layer manager (to one of three lower-layer agents; items 107, fig. 3).

3. As to claim 2, Tanaka et al. teach wherein the single layer manager interfaces with each stack component of the protocol stack (item 106, fig. 3).

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4. As to claim 3, Tanaka et al. teach wherein the single layer manager handles data flow to each stack component of the protocol stack (any one of three lower-layer agent; item 107, fig. 3; col. 6, lines 21-59).

5. As to claim 4, Tanaka et al. teach a protocol stack, comprising:
a plurality of stack components (items 108 and 107; fig. 3); and
a single layer manager (lower-layer manager; item 106, fig. 3) interfaced with each of the plurality of stack components, wherein the single layer manager protocol is instrumented, wherein instrumenting the single layer manager instruments the protocol stack (col. 6, lines 21-59).

6. As to claim 5, Tanaka et al. teach wherein the single layer manager handles data flow to each of the plurality of stack components (lower-layer manager; item 106, fig. 3; col. 6, lines 21-59).

7. As to claim 6, Tanaka et al. teach computer readable medium, comprising:
(a) receiving data from a first stack component of the protocol stack by a single layer manager (one of three lower-layer agent in item 107, fig. 3; col. 6, lines 21-59);
(b) analyzing the data for instrumentation information by the single layer manager (col. 6, lines 21-59; lower-layer manager; item 106, fig. 3) ; and
(c) routing the data to a second stack component of the protocol stack by the single layer manager (one of three lower-layer agents in item 107, fig. 3; col. 6, lines 21-59).

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8. As to claim 7, Tanaka et al. teach medium comprising instructions for the single layer manager to interface with each stack component of the protocol stack (items 107 and 108 which is managed by a single lower-layer manager or item 106, fig. 3).

9. As to claim 8, Tanaka et al. teach medium comprising instructions for the single layer manager to handle data flow to each stack component of the protocol stack (items 106, 107 and 108; fig. 3; col. 6, lines 21-59).

Response to Arguments

10. Applicant's arguments filed May 2, 2005 have been fully considered but they are not persuasive.

There is no requirement in the claims for the single layer manager to manage both the upper and lower layers of protocol stack. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner disagrees with the applicants' argument that Tanaka et al. do not teach single layer manager. In figure 3 of the reference Tanaka et al. teach item 106 labeled as lower-layer manager and controls three lower-layer agents in item 107. These lower-layer agents function as protocol stacks and the lower-layer manager functions as single layer manager as the applicant claims to be the invention. Therefore, the applicant did not overcome the rejection of prior art and the examiner retains the rejection of all of the claims.

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

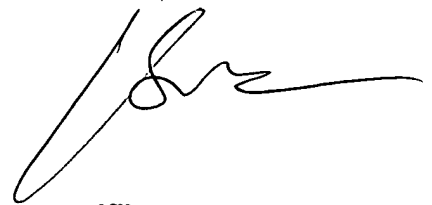
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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad O. Farooq whose telephone number is (571) 272-4144. The examiner can normally be reached on 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici can be reached on (571) 272-4083. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mohammad O. Farooq
July 21, 2005



KIM HUYNH
PRIMARY EXAMINER
7/22/05